United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

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P/S

75-1267

To be argued by
HERBERT A. LYON

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-1267

UNITED STATES OF AMERICA,
Appellant,

—against—

GERARD P. TROTTA,
Defendant-Respondent-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR DEFENDANT-RESPONDENT-APPELLEE

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

Appellant, NO. 75-1267

-against-

GERARD P. TROTTA,

Defendant-Respondent.

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BRIEF FOR RESPONDENT

PRELIMINARY STATEMENT

Respondent contends that the government's notion of extortion "under color of official right" (18 U.S.C. 1951 (b)(2) (Hobbs Act))is not supported by either the legislative history of the Act or by the common law meaning of the concept, and is plainly wrong. Not a single reported Hobbs Act decision has applied the Act as the government would apply it here. The precedent sought by the government would create an explosive expansion of Hobbs Act coverage never contemplated by the Congress and dangerous in the wholesale power over public officials and employees that it would deliver into the hands of federal prosecutors throughout the nation.

On June 30, 1975, the Honorable Edward R. Neaher, United States District Judge, Eastern District of New York, dismissed the second superseding indictment herein (74 Cr 681) (A 3) upon a written opinion (A 109). Respondent submits that Judge Neaher's opinion presents a cogent and correct statement of the law - one that is buttressed by compelling reasons of public policy.

THE PROCEEDINGS*/

On February 21, 1974, a number of persons involved in the Republican Committee of the Town of Oyster Bay, Long Island, including Angelo D. Roncallo, a member of the United States House of Representatives from the 3rd Congressional District of Long Island, were indicted for Hobbs Act and other violations in three companion indictments which were filed in the United States District Court, Eastern District of New York. At that time, as a result of the tragic death in December, 1973 of Robert A. Morse, United States Attorney for the Eastern District, Edward John Boyd V filled the post of United States Attorney in an acting capacity. Indictment No. 74 Cr 126 named Gerard P. Trotta and John M. Conroy as co-defendants. Mr. Trotta was Commissioner of

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*/ An excellent presentation of the background of this important case appears in the May 22, 1974 Congressional Record, at pages H 4248-4252. Respondent strongly commends it to the attention of the Court.

the Public Works Department of the Town of Oyster Bay. Mr. Conroy was the Town Attorney. Indictment No. 74 Cr.127 named John W. Burke, the Town Supervisor of Oyster Bay. Indictment No. 74 Cr 128 named Congressman Roncallo, along with Frank Antetomasso, the Deputy Commissioner of Public Works of the Town of Oyster Bay, and Frank Corallo, the Assistant to the Commissioner of Public Works.

The original Trotta indictment (74 Cr 126) and the Roncallo indictment each involved the same political contributor - the firm of William F. Cosulich Associates. Cosulich was also referred to in both of the superseding indictments against Mr. Trotta - 74 Cr 552 and 74 Cr 681.

The government dismissed the case of one of the defendants in the Roncallo indictment, Frank Corallo, and went to trial against Messrs. Roncallo and Antetomasso on that indictment. Congressman Roncallo and his co-defendant were acquitted after trial by jury presided over by Judge Neaher. In the course of the trial, Judge Neaher had occasion to hear and form an impression about the testimony of Mr. Cosulich. The Roncallo trial transcript reflected dozens of contributions by Cosulich to Democratic, Republican, Conservative, and Taxpayer Party organizations throughout Long Island. The transcript also reflected that Cosulich took tax deductions for his contributions.

(See Cong. Rec., May 22, 1974, H 4249).

On May 15, 1974 the case against Mr. Trotta's original co-defendant, John M. Conroy, was dismissed on the government's motion (74 Cr 126). Later the government dismissed the indictment against John W. Burke. By September 10, 1974, the cases against every Oyster Bay official except Mr. Trotta had resulted in either an acquittal or a dismissal. The indictment against Mr. Trotta (74 Cr 126) was dismissed for insufficiency upon the motion of present counsel with the government's consent and the first superseding indictment (74 Cr 552) was filed on September 10, 1974. That indictment was premised on an entirely different theory, that the checks from Cosulich to the Republican Committee had been obtained "under color of official right" 18 U.S.C. 1951 (b)(2).*/ On November 1, 1974 the second superseding indictment was filed against Mr. Trotta (74 Cr 681), again employing the theory of "under color of official right".

Mr. Trotta, prior to his initial indictment herein, served in <u>two</u> positions - that of Commissioner of Public Works and as member of the Republican Committee in his community. (A 95-97)

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*/ The indictment on which Mr. Roncallo was acquitted - and the original Trotta indictment (74 Cr 126) - had used the theory of "wrongful use of fear of financial and economic injury" to Cosulich, 18 U.S.C. 1951 (b)(2).

Local Law No. 2-1966, referred to in the indictment, did in fact confer upon whoever happened to be the Commissioner of Public Works certain authority over contractors, although that authority could only be exercised with the approval of the Town Board. Whatever dealings the Town had with contractors such as Cosulich, were defined in written contracts, thus giving the contractors rights that were enforceable in the courts. There is no dispute that Cosulich was aware of his contractual rights and duties and the supervisory authority existing in the Town Supervisor, the Town Board, and the Commissioner and the Department of Public Works.

The second superseding indictment (74 Cr 681) described (1) that Mr. Trotta had been the Commissioner; (2) that he had certain statutory authority over contractors; and (3) that Cosulich was aware of the statutory authority of the Commissioner. The indictment then went on to say what Mr. Trotta did which (in the government's view) was extortion - that he solicited political contributions from Cosulich for the Republican Committee. Like all of Cosulich's countless contributions to political clubs in the metropolitan area, these contributions were given by check made to the order of the Republican Committee of the Town of Oyster Bay. (A 79) The government concedes in the indictment that the checks were given "for the benefit

of the Republican Committee". Undisputed throughout is the fact that Mr. Trotta did not get any of the proceeds.

ARGUMENT

THE DISTRICT COURT WAS CORRECT IN DISMISSING THE INDICTMENT.

The heart of the government's argument is this:

When any person who holds public office solicits money for any cause from another person over whom he holds power, that solicitation, per se, is a crime.

The government says that the power that the solicitor could potentially wield, makes the solicitation extortionate as a matter of law. The government's argument is that it makes no difference why the one who asks for money does so; that it makes no difference if the request is official or not; presumably, that it makes no difference if the appeal is made during business hours or not and no difference as to what cause is being aided.

The potential to hurt the person approached is enough, says the government.

Respondent, on the other hand, submits that the potential use of power is not enough to accuse a citizen of extortion - exposing him to twenty years in prison under the Hobbs Act.

Inherent in public office and in every other aspect of life is the opportunity to aid or to harm others. The crucial thing is not the potential but how that potential is used. As defense counsel stated during the argument before Judge Neaher:

> Might just as well say, he was a member of the Rifle Association and he had a rifle. They don't say he used that power or employedly (sic) used that power or did something to suggest that he was using that power.
>
> They might just as well said (sic), he keeps rifles in the house and he could have used that rifle. Or, that he was bigger than the other fellow. That's the silliest thing I ever heard. Anybody has some kind of power someplace.
>
> If I don't have the power as a man, who is an official of Oyster Bay, I have the power that I may be stronger than somebody else for I may be a bigger man and in any act, I always have the power to force somebody if I want to. The question is, is there anything in my actions from which you can at least imply there was a suggestion I was going to use the power? Certainly not a crime to have power, good Lord. (A 98-99)

Above and beyond the naked power to harm someone who declines to give a donation, a Hobbs Act indictment, like any other indictment, must contain "a plain, concise and definite written statement of the essential facts constituting the offense charged" 18 U.S.C. Rule 7(c), Fed. Rules Crim. Proc.; Hamling v. United States, ____ U.S. ____, 94 S. Ct. 2887, 2907 (1974); United States v. Simmons, 96 U.S. 360 (1877); United

States v. Tomasetta, 429 F.2d 978 (1 Cir. 1970); United States v. Cruikshank, 92 U.S. 542, 558; United States v. Carill, 105 U.S. 611; United States v. Hess, 124 U.S. 483; Russell v. United States, 369 U.S. 749, 769-770 (1962). This indictment should have contained "a plain, concise, and definite written statement of the essential facts" showing that Mr. Trotta, the solicitor of contributions, attempted to abuse his power, or conspired to abuse it, or actually abused it. Compare United States v. Callanan, 113 F. Supp. 766 (E.D., Missouri S.E.D. 1953); United States v. Palmiotti, 254 F.2d 491, 494-495 (2 Cir. 1958); United States v. Murphy, 50 F.2d 455 (D.C. S.D.Ala. 1931).

The defect in the government's analysis is its failure to distinguish between the office and the office holder. Thus, the government incorrectly claims the rule to be as follows:

> . . . a demand for monies made by one holding public office, from a citizen who could be affected directly and adversely by the manner in which the public officer exercised his official functions, is inherently coercive (emphasis added; Govt. Brief, p. 3).

This analysis is faulty, because it blinds itself to the fact that persons holding public office have from time immemorial been involved in other community activities. Such persons hold multiple positions and wear many "hats". They serve on

the Boards of charities, political parties, and other community institutions. Prestigious public positions typically carry with them invitations by political and other community groups to serve in other capacities as board members, fund raisers, or trustees. In the field of fund raising it is no surprise to anyone as to why a group such as the Bedford-Stuyvesant Restoration Corporation might want the late Senator Kennedy or Mr. Watson of I.B.M. to serve on its Board. This is as ubiquitous a phenomenon today as it was in 1934 when the Copeland Anti-Racketeering Act was enacted (Act of June 18, 1934, ch 569, Sec. 1-6, 48 Stat. 979-980), and later, in 1945, when the Hobbs Act was enacted. 18 U.S.C. 1951.

It is inconceivable that Congress intended to stop this practice. Are we to give to federal prosecutors throughout the nation the extraordinary power to use the ancient common law phrase "under color of official right" to terminate by fiat the practice of fund raising by persons who happen to hold other responsible positions? If there is to be a shift in public policy (even assuming arguendo its constitutionality), it is fitting and proper that the Congress should first debate and enact such a policy into law. Compare, United States v. Enmons, 410 U.S. 396 (1972).

1. COMMON LAW EXTORTION

It was lawful in common law times, as it is today, for an office holder to solicit money. As Judge Neaher correctly observed, then as now, there had to be a corrupt use of the office (A 117-118). Common law extortion was not committed if the solicitor of funds had acted as a private individual. Burrall v Acker, 23 Wend. (N.Y.) 606 (1840); People v Schuyler, 4 N.Y. 173 (1850). In short, if the seeker did not wield or threaten to wield official position, it was not extortion "under color of office". Thus, Judge Neaher stated (A 117):

> Solicitations for a political party are not part of any official duty. Whatever one may think of the ethics of the practice, a local public official's solicitation or receipt of political contributions is neither unlawful nor extortionate unless a corrupt use of the public office is manifest. See United States v Sutter, 160 F.2d 754 (7 Cir. 1947). See also New York Penal Law Sec. 200, et seq. (McKinney 1975) */

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*/ The government argues that "precisely" because fund raising was not part of Mr. Trotta's duties as Commissioner, he had "no right" to ask anyone for a contribution (Govt. Br. 11). First, this is a non sequitur. Second, the indictment fails to allege any facts showing that the accused used or abused his job as Commissioner in requesting the contribution. Faced with this fact, the government tries to enhance its position by characterizing the request for the contribution as a "demand". We suggest that the legal status of the accusation should not be made to turn upon whether the prosecutor, who drew the indictment, used the word "demanded", "solicited", or "whispered in his ear".

According to Blackstone, common law extortion was "any officer's unlawful taking, by colour of his office, from any man, any money or thing of value that is not due to him, or more than is due, or before it is due." (emphasis added; 4 W. Blackstone, Commentaries 141 (Lewis Ed. 1902)). Professor Perkins defined it as "the corrupt collection of an unlawful fee by an officer under color of office" (emphasis added; Perkins, Criminal Law, 1957, p. 319). Analysis thus discloses four distinct conjunctive elements, to wit, (1) an unlawful fee; (2) by an officer; (3) under color of office; and (4) corrupt intent. (Perkins, id., pp. 319-323)

The distinction between the office and the office holder is nicely made by Professor Wharton:

> If a person who happens to be a public officer renders a service in his private capacity and demands a payment therefor or makes any demand in his private capacity, it is not technically extortion because not made under color of office. (emphasis added; Wharton, Criminal Law and Procedure (Anderson Ed. 3rd Edit), Section 1393, p. 791, citing Collier v State, 55 Ala. 125; State ex rel Bourg v Marrero, 132 La. 109, 61 So. 136; Ann Cas 1914C 783; State v Bauer, 1 N.D. 273, 47 N.W. 378)).

A good illustration of an office-holder's commissic of extortion "under color of his office" is presented in the Second Circuit opinion in Martin v United States, 278 F. 91: (2 Cir. 1922). The statute (then Sec. 85) had used the term "extortion". It did not define the term, and the common lav

concept was used. The defendant was a Justice Department employee who had solicited and received money to expedite a passport visa with which his official duties brought him into contact.

Compare Martin with United States v Sutter, 160 F.2d 754 (7 Cir. 1947), one of the cases upon which the Court below relied (A 117). In Sutter the defendant was a government employee of the War Department's gauge procurement section. He had contacts with firms manufacturing gauges for his agency. Like Mr. Trotta, the defendant was accused of soliciting funds from those contacts, "allegedly for a magazine fund for returned injured veterans; for the Christmas Fund for the office employees; for the relief of a deceased colonel's widow; for disabled veterans; and for several similar charitable causes" (160 F.2d, at p. 755). The Seventh Circuit held that the solicitation was not extortion.*/

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*/ The government relies heavily upon the fact that the Seventh Circuit's opinion in Sutter contained a dictum to the effect that the meaning of the word "extortion" (then in Section 171, Title 18, and undefined) was narrower in scope than common law extortion (Govt. Br. 11-13). The government thus seeks to distinguish Sutter to suggest that under the broader common law definition of extortion, the accused herein is guilty where under the Sutter holding his actions would have to be deemed lawful. (Govt. Br. pp. 11-13). The fact is, however, that in this Circuit it has been held that the word "extortion" in Section 85 of the of the Criminal Code (the predecessor to Section 171, Title 18, at the time of Sutter) (now 18 U.S.C. 872), means common law extortion. Martin v United States, 278 F. 913, 915, and,

(continued on next page)

2. THE HOBBS ACT: LEGISLATIVE HISTORY

There are two broad elements to any Hobbs Act violation, (1) interference with interstate commerce, and (2) extortion. United States v. Merolla ___F.2d___ (2 Cir. August 1[illegible], 1975, No. 75-1011), note 3, citing Stirone v. United States, 361 U.S. 212, 218 (1959). As indicated, the subject of this appeal is the nature of the second element, extortion.

Hobbs Act extortion "under color of official right", like common law extortion, requires a corrupt abuse of the office by the office holder. The corrupt abuse of this office, however, may take many forms. Each of them, however, contemplates a quid pro quo between the extortor and the extortee, involving the abuse of the office.*/

(footnote continued from preceding page)

especially p. 917 (2 Cir. 1922). Thus, the Sutter dict[illegible] is not the law in this Circuit. Moreover, neither the government nor the Seventh Circuit has cited any authority nor given any good reason as to why the Congress wo[illegible]d have wanted to narrow the meaning of extortion in the o[illegible] Section 171. On the other hand, the view of this Circu[illegible] in Martin, supra, is grounded both in precedent and log[illegible].

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*/ For example, money may be given by the victim before the abuse of office is committed by the official (United St[illegible]es v. Irwin, 503 F.2d 1295 (7 Cir. 1974); or it may be given after the abuse of office (United States v. Kuta, ___F.2d ___ (7 Cir. June 30, 1975, No. 74-920); the extortor may abuse real duties (United States v. Crowley, 504 F.2d 9[illegible] (7 Cir. 1974); or the extortee may pay because of the apparent duties of the office holder (United States v. Mazzei

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Since an abuse of office is an element of the crime, merely alleging solicitation of money is not compliance with 18 U.S.C., Rule 7(c), Fed. Rules Crim. Proc. Hamling v. United States, ___U.S.___, 94 S. Ct. 2887, 2907 (1974). An indictment pointing to one equivocal act (the solicitation of money) is neither illuminating nor probative. (Compare United States v. Hale, ___U.S.___ (June 23, 1975, No. 74-364; 17 Cr. Law Rptr. 3094). Rule 7(c), Fed. Rules Crim. Proc., serves the salutory purpose of requiring the indictment to give the accused citizen a straightforward candid answer to the obvious question on the mind of any accused:

"How do you allege that I misbehaved?"

Instead of furnishing the accused with a statement of words or acts pointing to criminality, the government relies upon the fact that the indictment alleged that Cosulich understood that the firm could be adversely affected by the Commissioner of Public Works (Govt. Br., pp. 2; 7-9). Judge Neaher met this claim, pointing out that (A 116):

> Although the victim's state of mind is always an essential element of the crime of extortion, United States v. Kennedy, 291 F.2d 457, 458 (2 Cir. 1961), it is not a substitute for the key essential element - actions or words by the alleged extortioner which induce a reasonable compulsion in the victim to submit to the extortioner's demand.

(footnote continued from preceding page)

___F.2d___(3 Cir. July 29, 1975; 17 Cr. Law Rptr. 2429); the corrupt official may create coercive circumstances United States v. Price, 507 F.2d 1349 (4 Cir. 1974); or he may abuse his office by exploiting the payor's pre-existing perceptions (United States v. Gordon, 449 F.2d 100 (3 Cir. 1971).

The government responds by indicating that Judge Neaher "is difficult to follow" (Govt. Br., p. 8), because the government says that the office holder's office provides the "coercive impetus". If anyone is hard to understand, it is the government. "Coercive impetus" refers to the practice whereby an office holder may abuse his office so as to apply improper constraint, if that is indeed his intention. More than fear on the part of the payor is required. There must be some basis for the fear alleged - a basis found in the defendant's conduct. (United States v. Irali, 503 F.2d 1295, 1299, note 3 (7 Cir. 1974)). Without the crucial allegations which identify the manner in which the accused citizen allegedly misbehaved, he is not given fair warning of the charge.

As the Court observed in United States v. Local 807, 315 U.S. 521, 432 (1942):

> We take this (the government's contention) to mean that the intent of the owners in making the payment is to be regarded as controlling. We cannot agree. The state of mind of the truck owners cannot be decisive of the guilt of these defendants. On the contrary, their guilt is determined by whether or not their purpose and objective was to obtain the payment of wages by a bona-fide employer to a bona-fide employee.

And, at p. 533:

> This (the government's) objection mistakes

> the significance of this requirement of proof (of fear) in the case of robbery. Its true significance is that it places an added burden upon the prosecutor rather than upon the accused. That is, the prosecutor must first establish a criminal intent upon the part of the defendant and he must then make a further showing with respect to the victim's state of mind. The effect of this rule is to render conviction of robbery more rather than less difficult.*/

Here, therefore, where the only act alleged in the indictmen is the solicitation of the two checks, the government's clai that "the indictment need not allege action or words" (Govt. Br., p. 6), appears to be as bereft of logic as it is of supporting authority.

The requirement that words or acts pointing to misbehavior should be alleged in the indictment is evident from the very language of the Hobbs Act itself. Section 1951 (b)(2) defines extortion in terms of "wrongful use of actual or threatened force, violence or fear or under color of official right" (emphasis added). In response to this language, the government makes a rather silly syntactical argument that when certain intervening words are dropped

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*/ The specific holding of United States v. Local 807 - (granting an exemption to teamster truckers where extortionate methods were used) - was sought to be repudiated by passage of the Hobbs Act. But, see United State v. Enmons, 410 U.S. 396 (1972). That in no way clouds the logic and soundness of the quoted passages.

out of the statute, what is left is the awkward expression "by wrongful use under color of official right" (Govt. Br. 13). It is clear, however, that the intention of Congress was to forbid the "wrongful use of" office. The government says that it is "obvious" that the words "wrongful use" apply only to actual or threatened force, violence or fear "and not to" under color of official right (Govt. Br. 13). It certainly wasn't "obvious" to Congressman Hobbs, the sponsor of the Act. During Congressional debate on the bill, Congressman Voorhis posed the question to Hobbs:

> Q. In subsection (c), page 2, there is the word "wrongful". Does that word wrongful apply to the entire section?

And Hobbs replied:

> A. Yes; it qualifies the whole section (emphasis added; 91 Cong. Rec. 11908).

See also United States v Enmons, 410 U.S. 396, 399, note 2 (1973). Two years prior to the passage of the Hobbs Act, Hobbs had sponsored a similar bill, but it failed to pass. In introducing the original bill, he stated:

> This bill takes off from the springboard that the act must be unlawful to come within the purview of this bill (emphasis added; 89 Cong. Rec. 3213 (1943)).

In 1934, eleven years prior to the passage of the Hobbs Act, the predecessor statute was enacted - The Copelan Act. Act of June 18, 1934, Ch. 569, Sections 1-6, 48 Stat.

979-80.*/ Like the Hobbs Act, Section 2(c) of the Copeland Act provided that extortion was committed when the perpetrator "obtains the property of another, with his consent, induced by wrongful use of force or fear, or under color of official right) (emphasis added). Section 3(a) of the Act gave the term "wrongful" a hard application, by defining it to mean:"in violation of the criminal laws of the United States or of any State or Territory" (House Report No. 1833, 73rd Cong., 2d Session, May 30, 1934). Thus the 73rd Congress required that the wrongful extortionate act had to be an independent criminal violation. The Congress was careful indeed, lest an overbroad application of the Act might result. In fact, Section 4 of the Act required the express direction by the Attorney General before a prosecution could begin. A letter by the then Attorney General, Homer Cummings, to the Chairman of the House Judiciary Committee, dated May 18, 1934, was made a part of the House report. It assured the Chairman that the purpose of the legislation would be limited to activities like racketeering and that it would not apply to routine activities like those of organized labor, etc. House Report No. 1833, page 2, 73rd Cong., 2d Session, May 30, 1934.

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*/ The Hobbs Act ultimately replaced the Copeland Act as the result of Congressional dissatisfaction with the exemption given to teamster truckers in the Supreme Court's interpretation of the Copeland Act. United States v Local 807, 315 U.S. 521 (1942).

In an article on the Hobbs Act by the prosecutor in the Kenny case (United States v Kenny, 462 F.2d 1205 (3 Cir.), cert. den. 409 U.S. 14 (1972)), he, too, observes that it is "the wrongful taking of money" that is involved in extortion. Stern, Prosecution of Local Political Corruption under the Hobbs Act: The Unnecessary Distinction Between Bribery and Extortion, 3 Seton Hall L. Rev. 1, 16, citing State v Begyn, 34 N.J. 35, 45, 167 A.2d 161, 166 (1961). In fact, in United States v Irali, 503 F.2d 1295, 1303 (1974), the jury was instructed to the effect that "wrongful" modified "under color of official right".

The government cites no authority that Congress sought to abandon the common law requirement for wrongful intent, in enacting the Copeland and Hobbs Acts. Professor Perkins observes that:

> The word "corruptly" has been omitted from some of the statutory definitions of the offense but "in such instances the old and the new law are to be construed together; and the former will not be construed to be abolished except so far as the design to produce such effect appears to be clear" (citing Cutter v State, 36 N.J.L. 125, 127 (1873) - dealing with the New Jersey Statute).

And that:

> There is no indication, it may be added, of a legislative intent to change the substance of the offense (Perkins, Criminal Law, 1957, p. 323).

It is well to also pose the question of what reason Congress might have had to limit inherently bad activities such as violence to "wrongful violence", and,

at the same time, to fail to require that activities "under color of official right" should likewise be "wrongful"? See Stern, supra, page 16, citing Kirby v State, 57 N.J.L. 320, 321, 31 A. 213 (Sup. Ct. 1894).

The reason for the government's unsupported insistence that it should not have to inform Mr. Trotta of how his requests to Cosulich for funds were "wrongful", is because they were not wrongful.*/

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*/ The government is also chagrined by Judge Neaher's conclusion (A 116-117) that Trotta's behavior is not extortion "under the Penal Law of New York". The government says that the fact that Trotta's actions are legitimate under the New York Penal Law "of course" is "irrelevant" (Govt. Br. 8, note 1).

Irrelevant indeed! During Congressional debate on the Hobbs bill, Congressman Hobbs stated:

> ...there is nothing clearer than the definition of robbery and extortion in this bill. They have been construed by the courts not once, but a thousand times. The definitions in this bill are copied from the New York Code substantially. So there cannot be any serious question along that line by the gentlemen from New York who are the leaders of the fight against the bill" 91 Cong. Rec. 11900 (1945).

See, to the same effect, Congressman Walter (id. 11842); Michener (id. 11843); Hancock, (id. 11900). Accord: United States v Nedley, 225 F.2d 350 (3 Cir. 1955); and see references to New York Law in United States v Enmons. 410 U.S. 396, 407, note 16 (1973).

As in the case of the New York Statutory Law, the same result, requiring wrongful abuse of office, obtained at common law. People v Whaley, 6 Cow. (N.Y.) 661 - (1827); and, see, Burrall v Acker, 23 Wend. (N.Y.) 606,

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3. RECENT CASE LAW INVOLVING THE HOBBS ACT

The past three years have seen ten important decisions involving the application of the Hobbs Act to public employees. None of them is supportive of the government's view.

United States v. Addonizio, 451 F.2d 49 (3 Cir. 1972) and United States v. Kenny, 462 F.2d 1205 (3 Cir. 1972) involved indictments charging, alternatively, "force, violence or fear" or "color of official right". However, essentially, both cases turned upon the traditional "force, violence or fear" aspect. Both involved extortionate methods used by city officials to extract kickbacks on a massive scale from builders. The officials involved were accused with having corruptly abused their official positions as the quid pro quo used to pry money from the builders. The lengthy indictment in Addonizio specifically alleged that it was the intent of the defendants "to delay, to obstruct, to impede, and to thwart construction undertaken on behalf of the city of Newark, the contractors performing such work and the timely and usual movement of supplies and materials needed to complete the projects". It further alleged that these specific forms of official misbehavior and inter-

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608 (1840); People v Schuyler, 4 N.Y. 173; 179-180 (1850). (The Stern article indicated that "under color of official right" ... "has not been construed by the New York courts, which may account for the difficulties (which Stern believes inhere) in the New York Law". Stern, supra, p. 16 note 67. However, as these cases disclose, the author was in error, which may account for the fact that some federal prosecutors have erroneously concluded that New York law is "irrelevant".

ference were undertaken to extort money from the builders (Addonizio, supra, 451 F.2d at 58).

The trial Judge in Addonizio declined to submit the common law aspect of Section 1951(b)(2) to the jury, and the Third Circuit did not review that aspect (Stern, supra, p. 14, note 59).

Although the Kenny indictment presented both theories of extortion (462 F.2d, at 1210), the case revolved essentially around the traditional "force, violence, or fear" theory. Nor was there any discussion by the Third Circuit of the sufficiency issue, but merely a fleeting reference to Addonizio (462 F.2d at 1213).

United States v. DeMet, 486 F.2d 816 (7 Cir. 1973) also presented a clear abuse of official position. A bar and grill was victimized by Chicago policemen seeking protection money. It was alleged that police harrassed the owners, exploited a late night parking ordinance and the bar's staying open after hours. The management was told that "in order to avoid all this bullshit, why don't you pay so much a month" (DeMet, supra, 486 F.2d, at 818)

The same pattern of specific identifiable official misbehavior appears in United States v. Staszcuk, 502 F.2d 875 (7 Cir. 1974), rev'd. in part on other grounds en banc, 517 F.2d 53 (1975). There, a city alderman accepted money ir

return for not opposing a zoning application. The court stated:

> To accept money in return for an agreement not to oppose such applications - in effect to suspend independent judgment on the merits of such zoning changes - constitutes obtaining property from another, with his consent, induced under color of official right. (emphasis added; Staszcuk, supra, 502 F.2d at 878)

In United States v. Irali, 503 F.2d 1295 (7 Cir. 1974), a clerk in the City Collector's office suggested that in return for a sum of money he could expedite the approval of a liquor license application.

The court observed:

> The city collector had the responsibility of forwarding the application between the departments. A delay in this ministerial duty could cost the licensed applicant in lost revenue due to inability to open a tavern. (Irali, supra, 503 F.2d, at 1300)

In United States v. Crowley, 504 F.2d 992 (7 Cir. 1974), a bowling alley had been beset by vandalism and violence. Police withheld meaningful protection until pay-offs were given to the defendant-police officer. ("Hence, David and Morris were highly susceptible targets for such extortionate practices as set forth in the indictment") (Crowley, 504 F.2d at 995). The court noted that the officer made "wrongful use of his position" (Crowley, supra, 504 F.2d, at 995, note 5; emphasis added). Moreover:

> There was an implied threat that if payment was not made to Officer Crowley the victims would not receive adequate police service with the resultant impairment of the business enterprise (emphasis added; Crowley, supra, 504 F.2d at 998).*/

In United States v. Braasch, 505 F.2d 139 (7 Cir. 1974) policemen sought protection money from liquor establishments. The court observed that:

> . . . . it was appellant's misuse of the power of their office that triggered the harm as well as the payments in this case and made it the type of extortion charged in the indictment (common law theory; Braasch, supra, 505 F.2d, at 151-152; 144)

In United States v. Price, 507 F.2d 1349 (4 Cir. 1974), a Council Chariman exacted money as the price for issuance of a motel permit. There was given ". . .$12,000 in cash to Price in exchange for the latter's assurance that the motel would obtain its occupancy permit" (Price, supra, 507 F.2d, at 1350).

The government hangs its hopes on United States v. Kuta, ____F.2d____, (7 Cir. June 30, 1975, No. 74-920). The government cites Kuta to show extortion "under color of official

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*/ The government cites Crowley to show that all that was involved was (1) the power to take action, and (2) the payment (Govt. Br., 10). That absurd claim, as shown, is flatly refuted by the Seventh Circuit.

right" merely because (1) Kuta had power, and (2) received money. The government argues that "not a word was uttered by the defendant" . . . "except the amount of money he desired", suggesting thereby that Kuta is like this case. However, as the opinion makes clear, the situations are readily distinguishable. As the Seventh Circuit noted, the "defendant agreed not to exercise his independent judgment on the merits of that change in return for payment" (emphasis added; Slip Op., p. 5). Official service in return for money was the quid pro quo. The defendant sold his job. The court further observed that "there existed a tacit understanding according to which the defendant refrained from objecting to the zoning amendment in return for a subsequent payment of money. . ." (emphasis added; Slip Op., p.5). Although the defendant didn't come right out and say "Unless you give me the money, you will not get the zoning change", that doesn't change the fact that the official made corrupt use of his office. The zoning application was supposed to be considered strictly on its merits. Here, help was given upon an expectation of money. Then the zoning applicant asked the defendant: "What do I owe you?", and Kuta responded $1,500". Res ipsa loquitur.

The most recent case is United States v. Mazzei, __ 2d ____ (3 Cir. July 29, 1975; 17 Crim. Law Rptr. 2429). A firm

named B.M.I. wanted to lease unused government real estate and defendant, a Pennsylvania State Senator, took money to get the lease for B.M.I. The Third Circuit noted the "misuse of the defendant's official power" and the "wrongful exercise of the power of office". (17 Crim. Law Rptr., at 2430).

In each of the surveyed cases, the essential connection between (1) power, and (2) payment, was (3) the specific identifiable misuse of office. It is the absence of the latter element which is the critical infirmity in the accusation against Mr. Trotta. Although the Hobbs Act was intended to protect against extortion, it certainly was not intended to stop political contributing.*/ As this Court stated one month ago (in a different fact setting):

> We do not see how he can be subject to prosecution under this statute for restraining or affecting his own commerce where he has a right to lawfully choose . . . (emphasis added; United States v. Merolla, ___F.2d___ (2 Cir. August 11, 1975, No. 75-1011).

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*/ Even at common law, there was no extortion, "under color of office" if the gift was voluntary. May's Criminal Law, 3rd Edit., 1905, Section 141, citing Commonwealth v. Dennie, Th. Cr. Cas. (Mass.). 165. In our day, contributing may, however, run afoul of laws other than the Hobbs Act. See for example, Title 18 U.S.C., Sec. 610; and see New York Election Law, Sec. 480 (McKinney, 1974-1975 supp.)

4. THE ENMONS CASE

The Government cites United States v Enmons, 410 U.S. 396 (1972) in support of its assertion (discussed above) that the Hobbs Act does not require the accused to make a wrongful use of his office. The government has snatched one sentence from Enmons, to the effect that "wrongful" is limited to situations where the accused "has no lawful claim to the property" (Enmons, supra, 410 U.S. at 400; Govt. Br. 14).

The government is grasping at straws. The Enmons indictment involved the "force, violence or fear" aspect of Section 1951(b)(2) and not the "color of official right" aspect. The Court noted, however, that Congressman Hobbs had intended the entire section to be modified by the word "wrongful", citing 91 Cong. Rec. 11908 (Enmons, supra, 410 U.S., at 399, note 2).

The case stemmed from a labor dispute in which strikers were charged with using violence against facilities of the Gulf Staces Utilities Company. Although the factual setting is different from the one presented here, the underlying principle strongly supports the accused. The gist of the Court's thinking was that when a working man on strike is seeking higher wages, his quest is for a legitimate objective. In that sense the strikers' activity - not - withstanding violence - was not "wrongful" within the Hobbs

Act, because they had a "lawful claim to that property" (Enmons, supra, 410 U.S., at 400). Could the Court have literally meant that strikers seeking higher wages had a "lawful claim to that property", that is, a property right in the higher wages that they had not yet won? What the Court really seems to have meant was that the strikers were pursuing a socially legitimate end. In that sense, the underlying principle of Enmons appears to be that when one is pursuing a socially legitimate end - one that the Congress hardly could have intended to stop - his behavior is not "wrongful" within the meaning of the Hobbs Act. Thus, only "illigitimate" activities are covered by the Act. (Enmons, supra, 410 U.S., at 407).

The Court cautioned against "too literal" application of the Act by the government (Enmons, supra, 410 U.S., at 410). The original purposes of the anti-racketeering act are helpful in its interpretation:

> ...to close gaps in existing federal laws and to render more difficult the activities of predatory criminal gangs of the Kelly and Dillinger types (United States v Local 807, 315 U.S. 521-530 (1942)).

As the Department of Justice had informed the Congress originally:

> The provisions of the proposed statute are limited so as not to include the usual activities of capitalistic combinations, bona fide labor unions, and ordinary business practices which are not accompanied by manifestations of racketeering (emphasis added; Senate Report No. 532, 73rd Congress, 2d Session, page 2, quoting memorandum from

the Department of Justice).

There was nothing in the Hobbs Act as it read at the time of Enmons (and there is nothing in it today) granting an exclusion to strikers seeking higher wages. The exclusion makes sense because of the legitimacy of the strikers' goal. As a legitimate goal, a strike in the pursuit of a wage increase falls outside of the original intention of Congress in passing the anti-racketeering statute. Is political activity less worthy of Hobbs Act protection? Is it more worthy? Is the prosecutor to decide? Respondent suggests that it is not desirable to permit subjective applications of the Hobbs Act by prosecutors applying personal morality to the fund-raising problem.*/ Compare Yick Wo v Hopkins, 118 U.S. 356 (1886) (discriminatory prosecution). As the Court noted in Yick Wo, supra, at 373-374:

> ...though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discrimination between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution.

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*/ The complexity of the problems of political finance make this a very fitting subject for Congressional and not prosecutorial determination. See essay on "Political Financing" (including bibliography), 12 International Encyclopedia of the Social Sciences 235 et. seq. (Sills Ed., Macmillan Co.)

From the standpoint of the customs and usages of our community, political fund raising is as much within the "legitimate" zone as the quest for higher wages was deemed to be in the Enmons case. The Supreme Court gave good reasons for applying its protection to the quest for higher wages, reasons that apply with equal vigor to this case. The Court stated:

> Even if the language and history of the Act were less clear than we have found them to be, the Act could not properly be expanded as the Government suggests - for two related reasons. First, this being a criminal statute it must be strictly construed and any ambiguity must be resolved in favor of lenity (citations omitted) ... Secondly, it would require statutory language much more explicit than that before us here to lead to the conclusion that Congress intended to put the Federal Government in the business of policing the orderly conduct of strikes (Enmons, supra, 410 U.S., at 411).

In light of Enmons, a number of questions arise:

If it is not legitimate for members of the group in office to seek money for political activities, who will pay the cost of educating the public about the issues; the cost of advertising an important referendum; the cost of promulgating a platform; of opposing an unworthy candidate? Is the federal government to become a "big brother"? How much financial support could a political group expect at the time when another political group is in power? Should not Congress decide upon the course of action to be taken, rather than the United States Attorney for the Eastern

District of New York? As noted by the Supreme Court:

> It is unlikely that if Congress had indeed wrought such a major expansion of Federal criminal jurisdiction in enacting the Hobbs Act, its action would have so long passed unobserved (Enmons, supra, 410 U.S., at 411).

Other questions arise if a solicitation is deemed an extortion: Is Nelson Rockefeller an extortionist when he solicits on behalf of the Republican Party? Is a local District Attorney an extortionist when he solicits (from among lawyers dealing with his office), on behalf of the Jewish War Veterans in which he takes a great interest? Is our Mayor an extortionist when he requests of persons with whom he and his administration deal that they buy tickets to a Democratic Party dinner or take a journal ad? When the Speaker of the New York Assembly invites financial participation in his annual lobster party, is that extortion? When public officials participate in telethons seeking funds for their party, are they extortionists? When a correction officer works on behalf of a favorite cause, the Emerald Society, is that extortion? When a federal District Court Judge runs in a State judicial primary and his campaign committee solicits money from lawyers some of whom appear before the Judge, is that extortion? */

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*/ We annex a group of exemplars in support of a request that judicial notice be taken of the fact that financial solicitations such as appear in these exemplars are a ubiquitous part of modern American society. (Rule 201, Federal Rules of Evidence).

The government's answer to all of these questions must be "yes". Given (1) power potential and (2) payment, the Hobbs Act applies, says the government. (Govt. Br. 10). During oral argument, defense counsel pointed out that a prominent New York City Judge made solicitations on behalf of a law school. Counsel also made reference to solicitations on behalf of the Boy Scouts. Government counsel responded (A 93):

> If a Judge called up someone and said, you should contribute money to the Boy Scounts that would be a violation of the canons of ethics. Precisely because it's understood that kind of conduct, where a judge calls up a lawyer inherently has implied threat, is improper. That is the same type of conduct the statute is aimed at. (emphasis added).

Respondent suggests that if that point of view correctly states the law, the government best build more prisons.

One final aspect of the case requires comment. Judge Meaher observed in his opinion that the merit of the objections that were addressed to the sufficiency of the indictment herein, had to be judged (A 110):

> ...only against the face of the indictment. Extrinsic particulars cannot be relied on to supply any missing essential element. Russell v United States, 369 U.S. 749, 769-770 (1962).

Nevertheless, the government opines in its brief to this Court that Mr. Trotta, as Commissioner of Public Works, "was lacking totally in the technical qualifications

necessary to perform the duties of the public office he held ... " (Govt. Br. 5).*/ The government's disclosure that it has begun to interest itself in which

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*/ A lawsuit is not a Congressional investigating committee. In light of the government's ad hominem argument bearing upon the "technical qualifications" required of State employees (in the government's view), we present the following information appearing in the record, concerning Mr. Trotta's background:

Prior to Mr. Trotta's becoming the Commissioner of Public Works, he had proceeded through the Civil Service Merit System (A 52). From 1951 to 1957, excluding a period of time in which he served in the Marine Corps. during the Korean War, Mr. Trotta worked for Nassau County in the Public Works Department's Insect Control Division. In 1957 he was promoted to labor foreman, and in 1959 he was promoted to Assistant Superintendent of Parks. In 1964, Mr. Trotta became the Acting Superintendent of Parks, and in 1966 he was appointed by the Town Board as Superintendent of Parks (A 52). Later, in 1971, Mr. Trotta was appointed Commissioner of Public Works of the Town of Oyster Bay (A 52).

It appears, therefore, that although Mr. Trotta's job as Commissioner was appointive (having been above the Civil Service hierarchy), he had proceeded entirely on a Civil Service merit basis through the Civil Service hierarchy, before his appointment as Commissioner (A 52-53).

Although Mr. Trotta lacks a college degree, a qualification upon which the government apparently places undue emphasis, he has always demonstrated exceptional administrative ability. The Town of Oyster Bay, during Trotta's period of service, has enjoyed a reputation for having one of the finest park systems in the State (A 52-53).

public employees have "the technical qualifications necessary" (and, presumably, in which employees lack them), is indeed disturbing. If the government's interest is encouraged, does that not open a Pandora's Box? Are we witnessing a too expansive use of the Hobbs Act to multiply the powers of a federal prosecutor at the expense of freedom and local autonomy? Is an attitude of disdain toward local officials seeping into the law enforcement process? See, for example, United States v Merolla, ___ F.2d ___ (2 Cir. August 11, 1975, No. 75-1011); United States v Archer, 486 F.2d 670 (2 Cir. 1973). The fact is that New York State does have its own law enforcement machinery. It may be more fitting if the "canon of ethics" was enforced by the bar association instead of by the federal prosecutor (Compare A 93).

If we are to witness the birth of a mini-Hatch Act, one that would apply to thousands of state and local employees within the Eastern District (compare 18 U.S.C. Sec. 602), should not the New York State Legislature and not the federal prosecutor, enact it? It is undeniable that like the rest of us human beings, the federal prosecutor is a creature of and is answerable to the law. (compare May 22, 1974 Cong. Rec., pp. H 4248-4252.)

He is neither an ombudsman nor a czar!

CONCLUSION

FOR THE FOREGOING REASONS, RESPONDENT MOST RESPECTFULLY PRAYS THAT THE ORDER OF THE DISTRICT COURT BE AFFIRMED.

Respectfully submitted,

LYON & ERLBAUM*/
Attorneys for Respondent

On the Brief:

WILLIAM M. ERLBAUM
HERBERT A. LYON
CHARLES WENDER

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*/ We wish to acknowledge the helpful assistance of three non-attorneys who made valuable contributions to this effort, to wit, Elinore Palmer, Carol Crawford Erlbaum and Rose Ryan.

E X E M P L A R S

THE VICE PRESIDENT

WASHINGTON

Dear Fellow American:

Next year, 1976, will be an historic year for all of us. It will be our Bicentennial year -- a year to celebrate the 200 years of freedom our Nation has enjoyed and a year to consider carefully what will happen to the system of government which our forefathers so wisely devised.

I have recently visited with the National Republican Senatorial Committee. The Chairman of that Committee, Senator Ted Stevens, has pointed out that in 1976 there will be 33 United States Senate positions up for election -- 11 Republicans and 22 Democrats now hold those positions. It is possible for Republicans to elect a majority to the Senate -- and at the very least 1976 offers a great opportunity to restore the balance of the two-party system in the Senate.

The Republican Senatorial Committee wants to start now to assist Republican Senators who will seek re-election. And the Committee must also help identify and encourage candidates to challenge incumbent Democrats. To do this, consistent with the new campaign financing laws, the Republican Senatorial Committee needs your help.

Under the new laws, a person may contribute up to $25,000 to the Senatorial Committee and any amount of financial help now will enable the Committee to get off to an early start on its campaign to elect strong Republican Senators in 1976. The Committee would be happy to answer any questions you may have about procedures under the new law.

I know there will be many organizations seeking your financial support in the 1976 elections. My experience with the U. S. Senate has impressed me with this body's importance as a source of responsibility and continuity in our government. Senators serve six years, and one-third of the Senate is elected every two years. The people we elect in 1976 will be in office until 1982 -- in office during years of crises and great challenges to our democracy.

There are now 38 Republicans in the Senate -- with the contest in New Hampshire still pending. (Incidentally, Louis Wyman, the Republican who was certified as the winner of that very close New Hampshire race, has not yet been seated formally. If a special election in New Hampshire is required to settle that contest once and for all, the National Republican Senatorial Committee will need funds immediately to assist Mr. Wyman's campaign for this seat.)

It is my sincere hope that you will generously support the Committee because it is imperative that the Committee receive funds now if it is to meet the commitments for radio, television and other campaign advertising necessary for Senate campaigns. With your help, we can elect more Republican Senators.

I have asked the Committee to separate answers to this letter from regular mail so that I may have a complete report of the response to this personal request.

It is my firm hope that 1976 will be a good year for you, for our country and for our future. Please believe me when I say that your decision to help this Committee elect Republican Senators will mean that 1976 will be a year when we recommit our Nation to those principles and ideals we all hold dear.

Gratefully,

Vice President

A copy of our report is filed with the Federal Election Commission and is available for purchase from the Federal Election Commission, Washington, D.C. 20005

Absolutely no taxpayers' funds have been used in the preparation or mailing of this correspondence.

Office of the
District Attorney
Kings County

EUGENE GOLD
DISTRICT ATTORNEY

MUNICIPAL BUILDING
BROOKLYN, N. Y. 11201

PERSONAL - UNOFFICIAL

June 17, 1975

On May 12, 1975, four tickets amounting to $51.00 were mailed to you for a baseball game scheduled between the New York Mets and the St. Louis Cardinals for Wednesday night, June 25, 1975.

You will recall that the Kings County Jewish War Veterans plan to play host to a group of disabled and hospitalized veterans at the Ball Park and your contribution would help to defray the expenses.

Perhaps there has been an oversight in mailing the check. Will you please be good enough to take care of this matter at this time.

Cordially yours,

Eugene Gold
EUGENE GOLD
Chairman

P.S. Please make check payable to Kings County Jewish War Veterans. It's tax deductible--of course.

P.P.S. If your check has already been mailed please disregard this letter.

Emerald Society

OF THE

COURT ATTACHES OF GREATER NEW YORK

THOMAS M. MULDOON
President

HELEN D. DEVINE
1st Vice-President

KATHERINE BANNING
2nd Vice-President

RUTH PALMIERI
Treasurer & Financial Secretary

MAY MOYSE
Corresponding & Recording Secretary

GERARD P. MURPHY
President Emeritus

IRISH INSTITUTE

328 WEST 48th STREET • NEW YORK, N.Y. 10036

My Dear Friends:
Once again it is my sincere privilege to announce, our Society's Annual Scholarship Dinner- Dance, will be held on Thursday Evening February 27, at Antun's of Queens Village. There will be dancing to the Eddie Gunning Orchestra, and as is our custom, we will present our"Irishman of the Year" award. This year our recipient is the Honorable Paul O'Dwyer, President of the City Council of the City of New York.

Needless to say, we could not bestow our award on a more deserving individual, for in honoring Paul O'Dwyer we actually honor ourselves. His dedication and accomplishments have been applauded throughout the nation. The untold deeds that have benefited his fellow man, the vigilant efforts on behalf of the oppressed in his native Ireland, as well as in our own United States have not gone un-noticed. His devotion to home and family as husband and father, truly exemplify the aims and goals as outlined in the Constitution and by-laws of the Emerald Society of the Court Attaches of Greater New York.

We ask that you join with us on our "Night of Nights" and shake hands with all the neighbors. Tickets are most reasonably priced at $15.00 ea. with food, beverages and dancing all inclusive. Please make all checks and money orders payable to the Emerald Society of Court Attaches. We look forward to seeing you, on what we believe will be a most memorable evening. All proceeds will go to the Scholarship Fund, provided for the sons and daughters of our members.

Kindest regards:

Tom Muldoon

COMMITTEE TO ELECT
GERALD J. BELDOCK CIVIL COURT JUDGE

(8th Municipal Court Dist.)

26 Court Street • Brooklyn, New York 11242

962-5678

June 30, 1975

Dear Friend:

I am delighted to let you know that a longtime friend, Gerald J. Beldock, has been designated as a candidate for the office of Judge of the Civil Court in the Primary Election on September 9, 1975.

Jerry Beldock's outstanding record as a practicing attorney, his participation in community and philanthropic work, his recent six years of experience as a Law Secretary to two Justices of the Supreme Court and his judicial temperament make him an excellent candidate for this office.

As you know, primary elections are extremely expensive and, if a winning campaign is to be conducted, sufficient funds are needed to help us communicate Jerry's excellent qualifications to the voters.

I urge you to help us elect to the Judiciary this outstanding attorney with your generous support. Please send your campaign contribution, payable to Leonard Bernstein, Treasurer, in the enclosed, self-addressed envelope.

Sincerely,

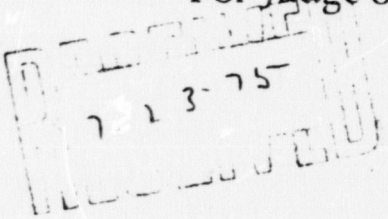
Marie M. Lambert

Marie M. Lambert

Committee to Elect Qualified Judges

BERNARD HERMAN

For Judge of the Civil Court



Dear Friend:

The friends of Bernie Herman are honoring him at a Reception and Cocktail Party on August 14, 1975 at the Press Box, 139 East 45th Street, New York City from 5:30 P.M. to 7:30 P.M.

As you are aware, Bernie Herman has impressive credentials in public service, and is exceptionally qualified by reason of his extraordinary experience both in the practice of law and the Court system, the latter as law secretary to a Justice of the Supreme Court. Furthermore, those who know Bernie recognize him as a decent, warm and compassionate person.

To assure the election of Bernie Herman to the Civil Court, a vigorous and costly campaign must be waged, and we therefore request your assistance in defraying these expenses.

Checks for reservations at fifty dollars per person may be made payable to William J. McGowan, Treasurer, 535 5th Avenue, New York, New York 10017.

Sincerely,

David Avrach

William J. McGowan

DA:jw

Please accept the enclosed check in the sum of $_____ for_____ tickets to reception honoring BERNARD HERMAN, Judicial Candidate for Civil Court.

Enclosed is my contribution in the amount of $_____

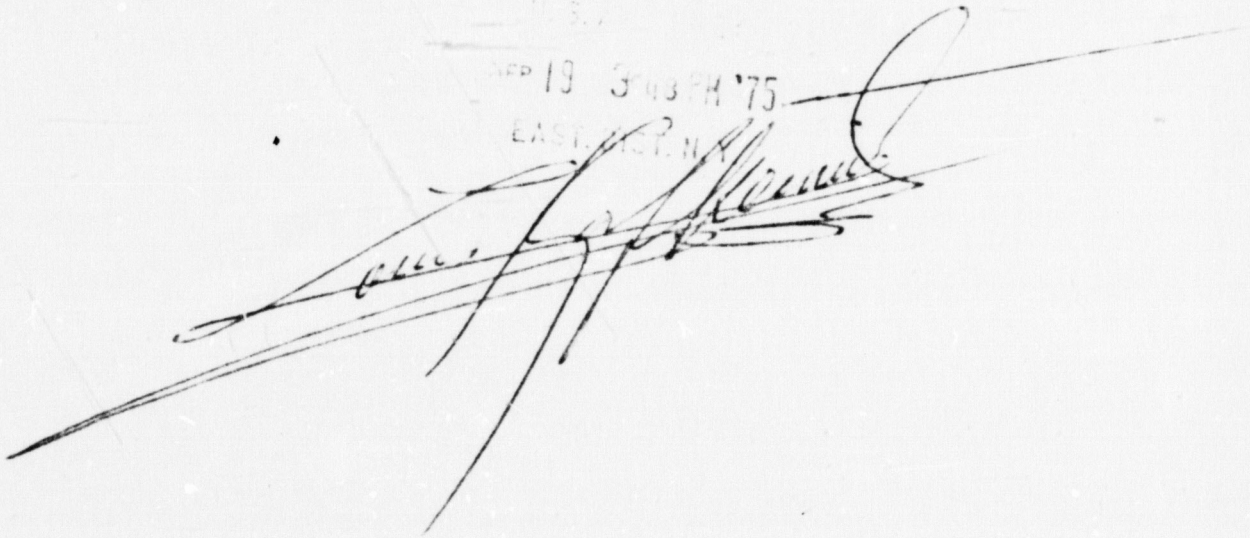
Make Checks Payable To: WILLIAM J. McGOWAN, Treasurer.

NAME_____

ADDRESS_____

Telephone No._____

_____No. of Tickets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